

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

HEATHER WAGNER, et al.,	)	14-CV-7326
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	Philadelphia, PA
	)	February 9, 2015
Defendant.	)	9:38 a.m.

TRANSCRIPT OF ARGUMENT ON MOTION  
BEFORE THE HONORABLE JUAN R. SANCHEZ  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (The following was heard in open court at 9:38 a.m.)

2 (Audio recording begins as follows):

3 THE COURT: -- but the discovery, I mean, I could  
4 see -- I could see bifurcating the case for trial on the issue  
5 of bad faith and other, but the discovery is almost the same.  
6 It's central to the question of whether there's a breach of  
7 contract or not on its evaluation of the claim, which is the  
8 basis of the -- of the bad faith claim. So I think they  
9 intertwine.

10 MS. JONES: If I may, Your Honor, use the example of  
11 the claim diary in this case, which is Allstate's record of  
12 how it's handled the claim, it's completely irrelevant to the  
13 value of plaintiff's, you know, UIM claim. It doesn't -- you  
14 know, it's not her medical records. It's not her wage loss  
15 records. It doesn't go to the severity of the seriousness of  
16 her injuries.

17 But on the bad faith claim, we concede it would be  
18 completely relevant, the steps that Allstate took, what it  
19 considered in evaluating her claim and whether it acted  
20 reasonably. But, for instance, if we gave up that claim diary  
21 as part of combined discovery, that contains our work product,  
22 with respect to how we valued the claim, our adjuster's  
23 thoughts and mental impressions.

24 THE COURT: But that's central to the bad faith  
25 claim, isn't it?

1 MS. JONES: Yes, I completely agree that it's  
2 irrelevant --

3 THE COURT: Right.

4 MS. JONES: -- to the UIM claim.

5 THE COURT: But they're connected, aren't they? I  
6 mean, the basis of the breach of contract is what?

7 MS. JONES: The basis of the breach of contract --

8 THE COURT: You need to be out because you disagree  
9 as to the value of the claim.

10 MS. JONES: Right. Pure valuation of the claim,  
11 right?

12 THE COURT: Right.

13 MS. JONES: Whereas the bad faith claim is pure  
14 handling of the claim. Pure handling; what we did, what steps  
15 we took when; whether we acted fast enough; whether we took  
16 into consideration the right factors. I think that the  
17 issue --

18 THE COURT: Well, that goes -- doesn't it go all to  
19 the issue of whether the -- your bad -- what you did and how  
20 you handled it or how you evaluate it, forms the basis of the  
21 breach of contract claim, doesn't it?

22 MS. JONES: To the extent the breach of contract  
23 claim seeks something other than UIM benefits, yes. If  
24 there's a breach of good faith and fair dealing piece of that,  
25 sure. But otherwise, you know, the UIM claim is strictly how

1 seriously was she injured. It has nothing to do with the  
2 handling of the claim.

3 THE COURT: Very well. But -- but you will agree  
4 that they overlap?

5 MS. JONES: There's some overlap, Your Honor, I -- I  
6 would not disagree with that. But what I would say is that  
7 the overlap is not significant enough to put Allstate's work  
8 product in jeopardy, and create the discovery and other  
9 evidentiary issues that are going to be a problem if we do  
10 this together.

11 So, for instance, if we're still valuing the claim,  
12 if we're still evaluating it, if we're still considering its  
13 value for purposes of this litigation, having simultaneous  
14 discovery on bad faith effectively lets Mr. Haggerty sit next  
15 to our adjuster while our adjuster's evaluating the claim for  
16 purposes of this litigation.

17 THE COURT: Well, isn't that what the basis of  
18 the -- of the breach of contract is, because there's a --  
19 there's a sort of a covenant or good faith in dealings with  
20 your insured in terms of the breach of contract claim, and out  
21 of that and how the claim was handled comes about the bad  
22 faith claim. That's the problem with these cases, you know.  
23 I know that you have a dispute as to the valuation, but -- but  
24 they claim you mishandled it.

25 MS. JONES: Sure. No doubt.

1 THE COURT: You didn't value it properly.

2 MS. JONES: Sure, Your Honor. And that's why our --  
3 our request is, take the pure UIM piece and separate it out  
4 from the bad faith and the breach of duty of good faith and  
5 fair dealing claims. Let the UIM go first. Let us figure out  
6 whether there's even any basis for bad faith here, before we  
7 take the resources and the time and the discovery battles that  
8 will ensue on the bad faith piece.

9 THE COURT: I don't anticipate -- I don't anticipate  
10 a lot of -- I think most of it is overlap. I don't anticipate  
11 the -- in terms of the overlap, I don't anticipate that it  
12 will be that much more. The entire claim file will be  
13 available to him, right?

14 MS. JONES: Well, except for Allstate's work  
15 product. I mean, we -- so, for instance, in this particular  
16 case, not Mr. Haggerty, but the plaintiff's counsel who had  
17 the case before him, threatened litigation very, very early on  
18 in this case, in fact before they even turned over medical  
19 records. So as we're -- as Allstate is handling this claim,  
20 prior to litigation, it's doing so in anticipation of  
21 litigation. From the very earliest moments in this UIM claim,  
22 we had reason to believe we were going to be sued. So the --  
23 the adjuster's entries in the claim diary in which he's taking  
24 the steps to handle and process and evaluate, those are  
25 protected work product.

1 THE COURT: Okay. Well, we always have in cases --  
2 I mean, it's not unusual to have those issues come up in every  
3 single case that we have. How would this be any different?

4 MS. JONES: Well, what we would --

5 THE COURT: You could -- you could redact and  
6 produce and he'll file a motion if he wants more.

7 MS. JONES: And I understand that, Your Honor. We  
8 would -- our position is, we would be more than happy to  
9 litigate the UIM and then give him the whole claim diary with  
10 no redactions after the UIM claim is resolved, so that we can  
11 avoid those battles in between with redaction and motions. We  
12 -- we acknowledge that as part of a bad faith claim, if the  
13 UIM weren't mixed into this, he'd be entitled to the entire  
14 claim diary.

15 THE COURT: Okay. So -- so tell me, what is the  
16 essence of the disagreement as to valuation?

17 MS. JONES: The essence of the disagreement --

18 THE COURT: Right.

19 MS. JONES: -- as to valuation?

20 THE COURT: Right.

21 MS. JONES: The essence here is truly the severity  
22 of her injuries and whether this is a policy limits claim or  
23 not.

24 THE COURT: Very well. Let me hear from Mr.  
25 Haggerty.

1 MR. HAGGERTY: Yes, Your Honor. Your Honor, you've  
2 put your finger right on -- right on the issue. This is a  
3 breach of contract claim. Often insurers would like uninsured  
4 and underinsured motorist cases to proceed forward just as a  
5 tort case would. It's not a tort case. It's an underinsured  
6 motorist claim; have they fulfilled their obligations under  
7 the contract? Was there a contract; was there a breach of  
8 that contract, and were there damages?

9 THE COURT: Right, but -- but the bad faith is a  
10 separate claim as to how they handled it --

11 MR. HAGGERTY: Yes.

12 THE COURT: -- and how they valued it. You are in  
13 disagreement as to what's the worth of the -- what is the  
14 value of the case.

15 MR. HAGGERTY: Yes, sir.

16 THE COURT: So the only way that it could be -- it  
17 could be decided as to what the valuation of the case is, is  
18 to submit it to the jury. The jury will decide what the value  
19 of the case is, right?

20 MR. HAGGERTY: They will determine what the value of  
21 the case is. But, regardless of their evaluation, it does not  
22 mean that there's no bad faith. If they only said it's worth  
23 25,000, they still could have handled it in bad faith. They  
24 could have delayed it, they could have obfuscated, they could  
25 have done many things.

1 THE COURT: Right.

2 MR. HAGGERTY: They may have hit the right value,  
3 but they still may have handled it in bad faith.

4 THE COURT: Okay. So the -- so the ques -- so the  
5 bad faith claim is how -- how it was handled. But why can't  
6 that be bifurcated and why shouldn't it be bifurcated?

7 MR. HAGGERTY: Well, there's -- the primary reason,  
8 Judge, is that -- and I think it goes to -- first of all, I  
9 think you're right that discovery is essentially the same and  
10 it should go forward, and if there are particular issues in  
11 discovery -- because we're arguing these in the abstract, all  
12 these --

13 THE COURT: Right.

14 MR. HAGGERTY: -- things they're trying to protect.  
15 And as Your Honor suggested, they can redact and I can then  
16 file a motion. But the primary reason is, is that most of the  
17 time when the cases are severed and stayed, it's in state  
18 court because state court has a different procedure. In state  
19 court, the bad faith case is heard by the judge alone.

20 THE COURT: Right.

21 MR. HAGGERTY: In federal court, it's heard by the  
22 jury. So if you sever and stay, what they want is, they want  
23 me to try this case twice.

24 THE COURT: But I don't have to sever. I could -- I  
25 think we're talking two different things. If we're talking

1 for purposes of discovery, you could, for example, have joint  
2 discovery on both claims, --

3 MR. HAGGERTY: Exactly.

4 THE COURT: -- the bad faith claim and the breach of  
5 contract claim. However, that doesn't mean that you get to  
6 submit in federal court, where they have a right to a jury  
7 trial, both issues to the jury at the same time. They could  
8 be bifurcated to -- to sort of accomplish the same thing that  
9 is accomplished in state court, where the judge decides the  
10 bad faith and the jury decides whether there was a breach of  
11 contract.

12 MR. HAGGERTY: As long as we keep the same jury, I  
13 agree, yes.

14 THE COURT: Sure. You could bifurcate it.

15 MR. HAGGERTY: Yes. Yes.

16 THE COURT: We could do that very easily. They  
17 could arguably come back.

18 MR. HAGGERTY: I agree, Your Honor.

19 THE COURT: If there's no breach -- I suspect that  
20 you're saying even if there's no breach, the case will -- will  
21 still go forward, right?

22 MR. HAGGERTY: Well, I don't -- I don't know what's  
23 in their claim file.

24 THE COURT: Yeah.

25 MR. HAGGERTY: All I can see is how they've treated

1 my client. And it may be if a jury comes back and says the  
2 case is worth \$2,000, well, then I have to reevaluate whether  
3 or not I want to proceed with the bad faith.

4 THE COURT: Right. Okay. So why -- why -- which  
5 makes the argument that they're trying to make, why jump the  
6 gun and give bad faith discovery at this stage of the game?  
7 But, anyway, I could -- you could agree --

8 MR. HAGGERTY: Because then I have to try my case  
9 twice, Judge, because I don't have any bad faith discovery.  
10 I've got to try the case, --

11 THE COURT: It would be -- yeah, it will be a waste  
12 of -- yes.

13 MR. HAGGERTY: -- we have to get it, and then I have  
14 to do the bad faith discovery and come back with a new jury  
15 and put the whole case on again because it's relevant, not  
16 just the number, but how they handled each aspect of the case,  
17 how they evaluate it, and I got to put on every doctor, I've  
18 got to put it on again and do it twice, and that's just not  
19 right.

20 THE COURT: Right. I agree. But you certainly --  
21 you certainly agree or at least can accept the fact that even  
22 though we may have discovery on both issues, at this stage I  
23 could bifurcate for trial the two issues --

24 MR. HAGGERTY: Yes.

25 THE COURT: -- and submit to the jury --

1 MR. HAGGERTY: Yes.

2 THE COURT: -- the liability issue first --

3 MR. HAGGERTY: Yes.

4 THE COURT: -- and breach of contract, and then  
5 depending on what happens, --

6 MR. HAGGERTY: Right.

7 THE COURT: -- we may go to the second stage, right?

8 MR. HAGGERTY: Exactly, Your Honor. In fact, Your  
9 Honor, if I may, what I had suggested to defense counsel is,  
10 which we've done in some other cases down here in federal  
11 court, is that we have stage discovery. We first have  
12 discovery only on the UIM case, and then we have a settlement  
13 conference to see where the case goes. If it doesn't settle  
14 or it settles and we still think we want to pursue the bad  
15 faith, then we have a short period of time for bad faith  
16 discovery. That satisfies their -- their concerns that  
17 they're giving up everything. But I think your -- I think  
18 honestly -- honestly, your solution is a better one, which is  
19 we do all the discovery and then if necessary we bifurcate  
20 trial.

21 THE COURT: All right. Look, tell me a little bit  
22 about the -- tell me about the facts of the case, why you have  
23 such a big disagreement as to the value of case. What  
24 happened here in state -- in the underlying case?

25 MR. HAGGERTY: In the underlying case, an individual

1 named David Novatka, the case was in Schuylkill County, he  
2 lost control of his vehicle and crossed the center line and  
3 struck my client's vehicle.

4 THE COURT: Liability is not an issue then, right?

5 MR. HAGGERTY: I don't believe so.

6 THE COURT: What are the injuries then?

7 MR. HAGGERTY: The injuries, she sustained a  
8 traumatic head injury. She sustained aggravation of  
9 preexisting degenerative conditions to her back and neck. She  
10 sustained an injury to her knee. She continues to have pain,  
11 headache, disability as a result of the accident, as that's  
12 what we've outlined so far.

13 THE COURT: So what is the head injury; what  
14 happened -- what is -- what is the head injury?

15 MR. HAGGERTY: She --

16 THE COURT: You say traumatic head injury. What do  
17 you mean?

18 MR. HAGGERTY: She has -- she continues to have  
19 headaches and migraines, and as a result is unable to work.  
20 That -- that combined with her injuries to her -- her back and  
21 neck.

22 THE COURT: And so what was the -- what happened to  
23 -- what was the -- what was your demand here?

24 MR. HAGGERTY: Your Honor, prior counsel had this  
25 and referred it to me, when it became obvious they were going

1 to have to put it into suit. I believe he demanded the  
2 \$200,000 policy limits. There was \$25,000 paid by the insurer  
3 for the tort feisor in the underlying case. An offer of  
4 \$25,000 was made, and there was nothing further. I can't say  
5 that the case is definitely a policy limits case, Your Honor,  
6 but it's more than a \$25,000 case.

7 THE COURT: But the demand was policy limits, 200?

8 MR. HAGGERTY: Yes.

9 THE COURT: Did he give an alternate demand?

10 MR. HAGGERTY: I don't think he did.

11 MS. JONES: No.

12 MR. HAGGERTY: No.

13 THE COURT: So -- so if you have a demand that's  
14 \$200,000 and there's an offer of 25 and you don't lower the  
15 demand, you're basically seeking -- seeking policy limit, how  
16 is there bad faith, if they disagree with you that it's not a  
17 policy limit, and you just told me that it's not a policy  
18 limit?

19 MR. HAGGERTY: Well, because what happens, what  
20 these insurers do, Judge, it's different than a third-party  
21 case. In a third-party case, the insurer can do whatever they  
22 want to the plaintiff because there's no -- there's no privity  
23 of contract. There's no good faith covenant of fair dealing.

24 In a UM and UIM situation, this is their own  
25 insured, and what these carriers do, most of them do, is

1 they'll evaluate a case within a range and they'll say -- and  
2 I don't know what their valuation is, what their range is, but  
3 they -- they may say, we think this case is worth between 150  
4 and \$200,000. Then they go -- but they make an offer of  
5 \$25,000. So this is their own insured they're purposely  
6 trying to low ball.

7 Now, if their own insured takes \$25,000 on a case  
8 that they think is worth 150 to 200, then, yeah, I believe  
9 that's bad faith. I believe that they have a duty to  
10 negotiate in what they think is a fair range because it's  
11 different than the third-party context. So they have a duty  
12 of good faith and fair dealing to their insured. They have to  
13 treat them fairly. They can't try and low ball them and try  
14 to get it for much less than it's worth.

15 THE COURT: Okay. And what -- what is your -- so  
16 you agree it's not \$200,000. What is your valuation of the  
17 case?

18 MR. HAGGERTY: Your Honor, I'm sorry, I'm not  
19 prepared to tell you that today because I took this case only  
20 over recently from referral counsel and it's a great, big  
21 file, and we wanted to put the complaint together and get this  
22 file and -- and that's where I am on the case. I could  
23 respond to Your Honor's question by the end of the week.

24 THE COURT: Okay. Very well. Anything else?

25 MR. BROWN: Your Honor, if I can just be heard for a

1 moment.

2 THE COURT: Yes, you may.

3 MR. BROWN: Only on the issue of UIM because I defer  
4 to co-counsel on the bad faith claim. But I just want for  
5 purposes of the record for it to be clear, and I don't believe  
6 in any way that Mr. Haggerty misspoke, I think he probably may  
7 have confused this with another matter, but the underlying  
8 settlement in the case was \$50,000. It was Donegal Insurance  
9 for the tort feisor. They paid their full \$50,000 to the  
10 insured.

11 Now, after that, there was this demand which he  
12 spoke of for \$200,000, and that's based on the fact that the  
13 plaintiff insured here had limits of \$50,000 per person,  
14 \$100,000 per occurrence, and they had stacked insurance  
15 coverage with four vehicles. So when you multiply the \$50,000  
16 underlying per person coverage times four, you came up with  
17 the 200,000.

18 Now, based on the settlement, the underlying tort  
19 feisor of \$50,000, Allstate evaluated the case and made an  
20 additional offer of \$25,000 over and above the 50 that the  
21 insured had already received, valuing the case at that point  
22 at \$75,000.

23 Now, the injuries in the case, as Mr. Haggerty  
24 alluded to, there was a head injury, which was diagnosed by a  
25 physician as being a "mild concussion" with some subsequent

1 headaches afterwards. And as Mr. Haggerty also pointed out,  
2 there were preexisting conditions of this person's low back,  
3 thoracic spine, cervical spine, whatever, and the diagnosis  
4 was that there were strain and sprain injuries affecting the  
5 muscles of -- of the spine, and the evaluation was that these  
6 were not permanent substantially serious injuries; they were  
7 of a transient nature, and the valuation was made on that  
8 behalf.

9 So I only rise to speak to that factual aspect of  
10 the case with regard to UIM. Any additional comments on the  
11 bad faith, I'll defer to co-counsel.

12 THE COURT: Very well. On the pre -- on the head  
13 injury and all that, you're saying that the sprain, stain, and  
14 the other injuries to the back were -- were transient, not --  
15 or the head injury, the mild concussion as well?

16 MR. BROWN: There was a diagnosis of a mild -- "mild  
17 concussion," and that was actually taken from a medical  
18 examination that was done, an independent medical examination  
19 was done. So it was a mild concussion with subsequent  
20 complaints of headaches. Certainly those are subjective  
21 complaints which cannot be quantifiably or objectively proven;  
22 they come from the subject, and she does claim that she has  
23 these continuing headaches.

24 The actual objective injuries that from my  
25 understanding of my review of the file materials on this was

1 that, again, she had preexisting degenerative disc disease  
2 affecting the spinal cord, and because of her preexisting  
3 injuries, she had an overlay of sprain and strain injuries to  
4 the musculature that supports the vertebrae. And Allstate's  
5 position in evaluating the underlying claim was that such  
6 injuries, again, are of a transient nature. They heal. They  
7 are not permanent. They are not incapacitating. They're not  
8 debilitating. That's the reason why the case was evaluated in  
9 the manner it was long before either Mr. Haggerty got involved  
10 or myself, for that matter, on the breach of contract.

11 THE COURT: Okay.

12 MS. JONES: Briefly, Your Honor, on the bad faith  
13 and breach of contract case.

14 THE COURT: Go ahead.

15 MS. JONES: At the outset, I want to make clear that  
16 when I refer to plaintiff's counsel here, it's not Mr.  
17 Haggerty, --

18 THE COURT: Right.

19 MS. JONES: -- it's his predecessor counsel. But  
20 the reason we believe, Your Honor, that the bad faith claim is  
21 premature and should not proceed at this point is, it really  
22 has two bases: The first is bad faith failure to settle, and  
23 the second is bad faith delay. And as Your Honor pointed out,  
24 when Allstate makes a reasonable settlement offer and the  
25 other side refuses to negotiate and says, we're going to file

1 suit, and that's the only response we get, we can't negotiate  
2 against ourselves. And while negotiation is an art and  
3 refusal to negotiate within any range whatsoever other than  
4 the policy limits, isn't bad faith on Allstate's part.

5 With respect to bad faith delay, Your Honor, any  
6 delay here is squarely attributable to plaintiff's counsel.  
7 He waited two years to file the UIM claim. After that, it  
8 took him another year to get us the medical records. We got  
9 the medical records within 30 days. We made the \$25,000  
10 offer. He said, I'm going to file suit, that was his  
11 response, this is a policy limits case. He waited over a year  
12 to file suit. When he filed suit, there was a rule. It took  
13 another seven months to get a complaint. There's no delays on  
14 Allstate's part here. We were waiting on plaintiff's counsel  
15 the entire time. That's why we believe, Your Honor, that  
16 there's no basis for a bad faith claim at this point in time.

17 THE COURT: But that would be a subject of a motion  
18 for summary judgment.

19 MS. JONES: Yes. Thank you, Your Honor.

20 THE COURT: So we still got to have discovery.

21 MS. JONES: Yes, Your Honor.

22 THE COURT: And it seems to me that you could have  
23 discovery simultaneously. I could deal with any of the issues  
24 that may come up with regards to work product or privilege as  
25 it comes up or you could agree to stage the discovery. But

1 you could probably do this in 90 days. Usually my typical  
2 order is 90 days for discovery. So any reason why you cannot  
3 accomplish that in the next 90 days for discovery?

4 MR. HAGGERTY: No, Your Honor. The only thing that  
5 may slow things up is, they're not going to turn over their  
6 file and they're going to redact it, and we're going to have  
7 to file motions and be back before Your Honor. That's all.

8 THE COURT: Right. But they're at least entitled to  
9 redact, and you're going to have to establish that you're  
10 entitled to it.

11 MR. HAGGERTY: Sure. But they'll do the same thing  
12 in depositions, they won't let me ask questions and whatever,  
13 whatever.

14 THE COURT: Very well. So it seems to me that -- on  
15 the other hand, if you're prepared to see my magistrate judge  
16 and try to get the case settled at this stage, are you  
17 prepared to do that?

18 MR. HAGGERTY: I'd have to consult with my clients.  
19 I don't see any reason why it might not be fruitful to try  
20 that now, Your Honor.

21 THE COURT: Would you be willing to see my  
22 magistrate judge at this stage?

23 MR. BROWN: Your Honor, just as with Mr. Haggerty,  
24 I'd have to consult with my client, the claims representatives  
25 at Allstate. I'd be more than happy to do that and get back

1 to the Court --

2 THE COURT: Very well.

3 MR. BROWN: -- in an expeditious manner.

4 THE COURT: Well, discovery can be very expensive  
5 very quickly, as you well know, and I won't be entertaining a  
6 lot of motions very quickly. But --

7 MR. HAGGERTY: Your Honor, if we could get back to  
8 you on the settlement conference within 48 hours?

9 THE COURT: I would appreciate that so I can sign a  
10 referral fee. In the meantime, this is what I intend to do.  
11 I'm going to give you a discovery cutoff deadline of April  
12 23<sup>rd</sup>, 2015. Any and all discoveries on both issues will have  
13 to be completed. Any expert reports, due May 7<sup>th</sup>, 2015 by the  
14 plaintiff. The defense will be due May 14<sup>th</sup>, 2015.  
15 Dispositive motions, May 28<sup>th</sup>, 2015. Responses, June 11<sup>th</sup>,  
16 2015. If you have not already settled the case and have not  
17 seen my magistrate judge, I will touch bases with you in the  
18 middle of June; June 18<sup>th</sup>, 2015.

19 After that, as you well know, at the tail end, it  
20 will -- the case will get very expensive very quickly because  
21 dispositive motions in limine will be due June 25<sup>th</sup>, 2015;  
22 responses, July 9<sup>th</sup>, 2015. All your pretrial memos will be due  
23 July 9<sup>th</sup>, 2015. Pretrial memorandums by both defense and the  
24 plaintiff, requested points for charge, voir dire examination  
25 questions, verdict slip, and you should follow my standard

1 operating procedures, and I will give you a lot of guidance on  
2 how to prepare those documents, so that we can have a  
3 meaningful final pretrial conference, which will be held July  
4 13<sup>th</sup>, 2015. And your case will be on the trial pool for July  
5 20<sup>th</sup>, 2015.

6 Any questions?

7 MR. HAGGERTY: No, Your Honor.

8 MR. BROWN: No, Your Honor.

9 MS. JONES: No, thank you, Your Honor.

10 THE COURT: Okay. So that's the order I'm going to  
11 sign.

12 MR. HAGGERTY: Should we -- should we --

13 THE COURT: This is what I intend to do at this  
14 point in time. I'm going to deny the motion to sever the  
15 discovery. You could have discovery on both issues  
16 simultaneously. The question of trial, whether I try both --  
17 both issues at the same time or separately, I will deal with  
18 it at trial because I think that it makes a lot of sense to  
19 bifurcate this for purposes of trial, so that the jury could  
20 just concentrate on the issue of whether there's a breach of  
21 contract or not. If there is a breach of contract, then we'll  
22 -- we'll try the second issue before -- before that same jury,  
23 and that could be done very easily in the course of the trial,  
24 and I could give you guidance at the final pretrial  
25 conference.

1 Any questions?

2 MR. HAGGERTY: In responding to Your Honor about --  
3 within the 48 hours, may we do so just by telephone to your  
4 chambers?

5 THE COURT: You may. Just call my law clerk, Erin  
6 Borek, and let her know.

7 MR. HAGGERTY: Great. Thank you.

8 THE COURT: And my magistrate judge, Marilyn  
9 Heffley. So if that makes a difference, I will give you her  
10 name so that you know. Okay. Thank you.

11 MR. HAGGERTY: Thank you, Your Honor.

12 MS. JONES: Thank you, Your Honor.

13 MR. BROWN: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 (Proceedings concluded at 10:02 a.m.)

16 \* \* \* \* \*

17 C E R T I F I C A T I O N

18 I, Roxanne Galanti, court approved transcriber,  
19 certify that the foregoing is a correct transcript from the  
20 official electronic sound recording of the proceedings in the  
21 above-entitled matter.

22

23 \_\_\_\_\_ April 9, 2015

24 ROXANNE GALANTI

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